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Noninvasive Medical Technologies, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

INOMEDIC/INNOVATIVE) Case No. 2:14-cv-01035-RFB-VCF
HEALTH APPLICATIONS, LLC,)
)
Petitioner,)
) RESPONDENT'S EMERGENCY
v.) MOTION FOR PROTECTIVE
) ORDER
NONINVASIVE MEDICAL)
TECHNOLOGIES, INC.,)
)
Respondent.)
)
)

Defendant Noninvasive Medical Technologies, Inc. ("NMT")
hereby moves the Court for a protective order continuing the judgment
debtor exam, which is currently scheduled for May 25, for 30 days because:
(1) NMT's bookkeeper had to travel abroad for family emergency, and
therefore, it has not been able to completely assemble the requested
documents for the examination; and (2) continuing the examination will
avoid the need for multiple exams as plaintiff Inomedic/Innovative Health
Applications, LLC ("Inomedic") has indicated that it intends to continue the
exam, requiring multiple sessions. This motion is based on Federal Rule of

1 Civil Procedure 26, Local Rules 7-4 and 26-7, the papers and pleadings on
2 file herein, the following Points and Authorities, the attached exhibits, and
3 the declarations of Ryan Lower and Ronald McCaughan.

4 **DECLARATION OF RYAN LOWER IN SUPPORT**
5 **OF EMERGENCY MOTION FOR PROTECTIVE ORDER**

6 1. I am an attorney at Morris Law Group and am one of the
7 attorneys for NMT in this action. I have personal knowledge of the facts
8 stated in this declaration, and I am competent to testify to them if called
9 upon to do so.

10 2. The parties previously stipulated to hold the judgment
11 debtor examination on May 25, 2017.

12 3. On May 23, NMT's counsel advised Inomedic's counsel
13 that NMT's book keeper, Ms. Ho, had to travel to China to deal with
14 sensitive family matters and that due to Ms. Ho's absence, NMT has been
15 unable to assemble the documents requested for the judgment debtor
16 exam. Moreover, because many of the requested documents contain
17 proprietary and confidential information, NMT asked Inomedic to enter
18 into a protective order before the exam. For these reasons, NMT repeatedly
19 asked Inomedic to continue the judgment debtor exam so that the parties
20 could avoid multiple exam sessions and so that a protective order could be
21 entered before the exam. Inomedic agreed to enter into a protective order,
22 but it refused to continue the exam.

23 4. Despite the parties' sincere efforts to resolve this
24 discovery dispute without the Court's intervention, the parties were unable
25 to reach an agreement on continuing the exam. Accordingly, NMT was
26 required to file this motion.

27 5. Pursuant to LR 7-4, defendant's counsel's address and
28 telephone number is 300 South Fourth Street, Suite 900, Las Vegas, NV

89101, 702-47-9400. Plaintiff's counsel's and telephone number is 199 N. Arroyo Grande Blvd., Suite 200, Henderson, NV 89704, 702-434-3444.

6. Today, I notified by plaintiff's counsel via email that NMT would be filing this emergency motion.

7.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: May 24, 2017



RYAN LOWER

MEMORANDUM OF POINTS AND AUTHORITIES

By agreement of the parties, the judgment debtor exam was reset to May 25, 2017. Regrettably, NMT's Bookkeeper/Account Manager has been abroad the past few weeks and unable to participate in the collection of the numerous documents requested for the creditor's exam. See Exhibit 1, Declaration of Ronald McCaughan. Ms. Ho has been in her current position for the past 10 years. *Id.* She is the only person at NMT with her level of knowledge concerning the location of the records requested. *Id.* She has been responsible, almost solely, for all the DOD contracts, DCAA audits, account management responsibilities, payroll, taxes, employee issues, annual filings, and regulatory filings. *Id.*

Ms. Ho was born and raised in China. She had to return to China to address sensitive family matters. *Id.* She anticipates returning to work in the next few weeks. *Id.* NMT is committed to working with Ms. Ho, to the extent possible because of time difference, technology limitations and Ms. Ho's availability, to assemble the requested documents over the next few weeks if she is unable to return to the United States.

1 As the NMT is unable to provide a complete set of the
2 requested documents for the scheduled creditor's exam, if this exam
3 proceeds with incomplete documentation, Inomedic has already indicated
4 that it will be continued until the remaining documents are provided. Of
5 course, the parties will incur additional costs (the expense of which
6 Inomedic will likely seek to add to its judgment) and unnecessarily waste
7 time with a duplication of efforts. This creates an undue burden for NMT.

8 I. ARGUMENT

9 District courts enjoy extremely broad discretion in controlling
10 discovery. *Leffler v. Meer*, 60 F.3d 369, 375 (7th Cir.1995) (internal citation
11 omitted). The court may, for good cause, issue an order to protect a party
12 or person from annoyance, embarrassment, oppression, or undue burden
13 or expense. Fed R. Civ. P. 26(c). The rule reposes broad discretion in the
14 district court to issue a variety of orders for the protection of the parties
15 and witnesses in the discovery process. *Rodgers v. U.S. Steel Corp.*, 536 F.2d
16 1001, 1006 n. 12 (3rd Cir. 1976).

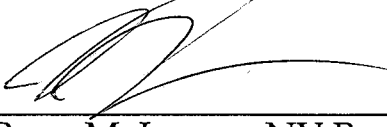
17 The Court should exercise its broad discretion to continue the
18 judgment debtor exam so that NMT can assemble the requested documents
19 and avoid the necessity of having multiple sessions of the exam. This short
20 request complies with Rule 1's admonish that the Federal Rules be
21 administered to secure the just speedy, and inexpensive determination of
22 every action. Moreover, Inomedic will not be prejudiced by a continuance.

23 II. CONCLUSION

24 This Court should adjourn the pending creditor's exam for 30
25 days to (1) allow NMT's bookkeeper to return from a family emergency
26 abroad and more completely assemble the requested documents; and (2)
27 avoid the need for multiple exams as Petitioner Inomedic/IHA
28

1 Applications, LLC ("Inomedic") has indicated that it intends to continue the
2 exam, requiring multiple sessions.

3
4 MORRIS LAW GROUP

5
6 By: 
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12 Attorneys for Respondent
13 Noninvasive Medical Technologies, Inc.
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of MORRIS LAW GROUP, and that the **RESPONDENT'S EMERGENCY MOTION FOR PROTECTIVE ORDER** was served via electronic service:

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Attorneys for Petitioner
InoMedic/Innovative Health Applications LLC

DATED this 24th day of May, 2017.

By: Patty Camm